

JUL 25 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

MARCUS D. WILSON,

Petitioner - Appellant,

v.

ROBERT AYERS, JR., Warden,

Respondent - Appellee.

No. 01-17345

D.C. No. CV-99-02868-CRB

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Argued and Submitted July 14, 2003
San Francisco, California

Before: REINHARDT, SILER**, and HAWKINS, Circuit Judges.

This case was decided by the district court before Whalem/Hunt v. Early,
233 F.3d 1146 (9th Cir. 2000) (en banc), in which we noted that equitable tolling

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable Eugene E. Siler, Circuit Judge, United States Court of Appeals for the Sixth Circuit, sitting by designation.

claims are “highly fact-dependent” and should be developed before the district court. Although the district judge invited memoranda regarding tolling, it announced in its order that it would not conduct any hearing on the issue. That part of the order was not consistent with the procedure subsequently discussed in Whalem/Hunt. Given the type of matters set forth in Wilson’s notice of appeal, the district court should, upon remand, explore appropriately petitioner’s allegations regarding equitable tolling. Id. at 1148.

REVERSED and **REMANDED** for further proceedings in accordance with this disposition.